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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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| NARCIZO ZAVALA GUILLEN, Plaintiff, vs. BANK OF AMERICA CORPORATION, EXPERIAN INFORMATION SOLUTIONS, INC, TRANSUNION LLC, CORELOGIC CREDCO, LLC., f/k/a First American Credco, a division of First American Real Estate Solutions, LLC, SRA ASSOCIATES, INC., EQUIFAX INFORMATION SERVICES,LLC., and DOES 1-10, Defendants. | CIV. NO. 10-05825 EJD PSG MOTION FOR ADMINISTRATIVE RELIEF FOR ORDER TO ALLOW DEPOSITION BY TELEPHONE/VIDEO CONFERENCE HON. PAUL GREWAL |
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I. INTRODUCTION

Plaintiff has noticed the deposition of Defendant Bank of America's' employee, Rhonda Weston, for Tuesday, September 20, 2011, in Buffalo, NY. The deposition notice and subpoena is attached as Exhibit 1. Plaintiff seeks an order allowing the deposition be conducted and recorded via remote means (via telephone and/or Skype telephone and video), as noticed.

Plaintiff's counsel has conducted five (5) Skype video depositions this year, including two recently, ordered by the Hon. Paul Grewal; the method is effective and efficient.

1 However, on July 28, 2011 Bank of America insisted that if Plaintiff wanted to take the
 2 deposition by remote means he would need to obtain a Court order.¹ Further meet and confer
 3 efforts have been unsuccessful.

4 With the date of the depositions fast approaching, and the necessary arrangements
 5 needing to be made, Plaintiff was forced to file this Motion for Administrative Relief.

6 **II. LEGAL DISCUSSION**

7 Pursuant to Fed. R. Civ. P. 30(b)(4) the parties may stipulate- or the court may on motion
 8 order- that a deposition be taken by telephone or other remote means. Plaintiff would like to
 9 minimize costs. A videoconference deposition is cost-effective since it avoids or minimizes
 10 expensive travel time and costs. **Federal Civil Procedure Before Trial** (2007), The Rutter
 11 Group, 11:1470, 11-170. Leave to take depositions by telephone is granted liberally. *Brown v.*
 12 *Carr*, 253 F.R.D. 410, 412 (S.D. TX 2008). A desire to save money constitutes good cause to
 13 depose out-of-state witnesses telephone or remote means. The burden is on the opposing party to
 14 show how they would be prejudiced. *Id.* at 11:472, citing *Cressler v. Neuenschwander*, 170
 15 F.R.D. 20, 21 (D. KS 1996).

16 Furthermore, Courts have stated that experimentation in new methods of recording
 17 depositions should be encouraged. *Rice's Toyota World, Inc. v Southeast Toyota Distributors,*
 18 *Inc.*, 114 FRD 647 (MD NC 1987)(the court also refused to limit video depositions to important
 19 witnesses who might be unavailable for trial since plaintiff was not requesting that regular
 20 stenographer be dispensed with, thus sharply reducing risks of video deposition). Also see, *Riley*
 21 *v. Murdock*, 156 FRD 130 (ED NC 1994)(allowing videotaped deposition), and *Fanelli v.*
 22 *Centenary College*, 211 F.R.D. 268 (D. NJ 2002)(anxiety over videotaping not good cause

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 25¹ Citing Fed. R. Civ. P. 30(b)(4).

1 sufficient to warrant a protective order).

2 **III. EFFORTS TO RESOLVE THIS MATTER**

3 On July 28, 2011, the parties discussed the deposition, and Plaintiff indicated he would
4 conduct it via remote means (via telephone and/or Skype telephone/videoconference which also
5 allows a recording), with the court reporter being in the presence of the witness in Buffalo, NY.
6 Bank of America insisted Plaintiff needed to obtain a Court order.

7 On the mornings of August 29 and 30, 2011, Plaintiff attempted to meet and confer
8 further by telephone and email. Despite being informed Bank of America's counsel would be in
9 the office on August 29, 2011, Plaintiff has yet to hear back from the bank.

10 **IV. RELIEF REQUESTED**

11 With the deposition date of September 20, 2011, fast approaching Plaintiff respectfully
12 seeks an order from the court permitting the depositions be conducted and recorded via remote
13 means (via telephone and/or Skype telephone and video).

14
15 /s/Ronald Wilcox

8/31/11

16 Ronald Wilcox
17 Attorney for Plaintiff

Date

18 **DECLARATION**

19 I declare under penalty of perjury under the laws of the State of California that each of
20 the above facts, and references to Exhibits are true and correct.

21 /s/Ronald Wilcox

8/31/11

22 Ronald Wilcox
23 Attorney for Plaintiff

Date

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ORDER

Plaintiff's Motion to conduct the deposition of Rhonda Weston via telephone and/or Skype video conference (and simultaneously record such) is hereby **GRANTED**. The suggestion that a court order was required here is plainly false. See Fed. R. Civ. P. 30(b)(4). The parties are encouraged to stipulate to such matters in the future to avoid unnecessarily burdening the court.

Date: 8/31/2011

Paul S. Grewal
U.S. MAGISTRATE JUDGE
HON. PAUL GREWAL